IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.L.P..No. 462 of 2007()

CC.104/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY

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PETITIONER/COMPLAINANT:

SUNIL KUMAR.P., S/O.RAGHAVAN,
"ARUNA NIVAS", KOYILANDY.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS: ACCUSED AND STATE:

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1. SASEENDRAN, S/O.KUNHIKANNAN,
VIYYOORKANDY HOUSE, P.O. KURUVANGAD,
KOYILANDY, KOZHIKODE DISTRICT.

2. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR HIGH COURT OF KERALA.`

BY ADV. SRI.P.R.SREEJITH -R1
PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU.

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 462 OF 2007

Dated this the 19th day of July, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.104 of 2005 on the file of the Judicial First Class Magistrate's Court, Koyilandy.

2. The case of the petitioner - complainant was that the first respondent - accused borrowed from him an amount of Rs.96,000/- and issued Ext.P1 cheque in discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the accused. After complying with the statutory provisions regarding notice etc. the complaint was filed since the amount was not repaid even after receipt of notice. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P6 were produced. On the side of the defence, Exts.D1 to D6 were produced, but no witness was examined. On closing the evidence of

the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction which led to the issuance of the cheque in question, the accused stated that Ext.P1 cheque was issued to the complainant as security when he entered into an agreement with the complainant to work as a gold smith. However, after considering the entire evidence, the trial court found that the petitioner failed to prove the case against the accused and acquitted him of the charges levelled against him.

3. On going through the impugned judgment, it is seen that the trial court found that the case set up by the accused was more probable. To come to this conclusion, the trial court relied on Exts.D2 to D5 in which the address of the accused was shown as that of the manufacturing unit conducted by the complainant. This shows that the accused had rebutted the presumption available to the complainant under Section 139 of the Negotiable Instruments Act, 1881. Considering the entire facts and circumstances of the case and in the light of the principles laid down by the Apex Court in the decision reported in **Hiten P. Dalal v. Bratindranath Banerjee (2001)6 S.C.C. 16,** this Court is of the view that the judgment of the trial court is based on evidence and requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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